



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on April 8, 2017, to authorize a tenant to change the locks to the rental unit, allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary and procedural matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice. The balance of the tenant’s application is dismissed with leave to reapply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on May 1, 2010. Rent in the amount of \$1,275.00 was payable on the first of each month. The tenant paid a security deposit of \$637.50.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on May 9, 2017; that date is earlier than the Act allows and automatically corrects to May 31, 2017, pursuant to section 53 of the Act.

The reason stated in the Notice was that the tenant has:

- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that "No Pets" has always been a term of the tenancy agreement. The landlord stated that the rental unit was advertised no pets, the rental application advertised no pets. The landlord stated that they would never agree to allow pets as their family has allergies to animals.

The landlord testified that on April 1, 2017, they had arranged for an inspection of the rental unit, to make a list of repairs and maintenance to be address in the upcoming months. The landlord stated that at the inspection they discovered the tenant had a cat.

The landlord testified that on April 6, 2017, they gave the tenant a letter informing them that having the pet was a breach of a material term of their tenancy agreement. The letter informed the tenant that the pet was to be removed by April 8, 2017. The landlord testified that the letter also informed the tenant that they would be conducting an inspection on April 8, 2017, to ensure compliance.

The landlord testified that when they attended the rental unit on April 8, 2017, there was a man outside the rental unit that barricaded the door and refused to allow them access to the rental unit, even after proper notice was given.

The landlord testified that they gave the tenant a second notice that they would be attending on May 2, 2017, and informed the tenant that they have spoken to the police for assistance should they be denied access again. The landlord stated that access was not denied on May 2, 2017, and the cat had not been removed.

The tenant testified that they did not remember that there were no pets allowed. The tenant stated that they were unaware of the rules about obtaining pets and acknowledged that they did not receive permission from the landlord to have the cat, which they obtained in October 2016.

The tenant testified that they did not allow the landlord access to the rental unit on April 8, 2017, because they felt threatened by the landlord's behavior on April 6, 2017. The tenant stated that they have not made any attempts to relocate the cat, as of the date of the hearing.

The landlord responded that the tenant knew they were not to have pets and during their initial conversation the tenant stated that other people have pets in the building. The landlord stated that they informed the tenant that those other occupants are home owners and have nothing to do with their tenancy agreement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Under section 18 of the Act, a tenancy agreement may include terms prohibiting pets. I am satisfied that the original tenancy agreement provided for no pets.

Under section 14(2) of the Act, a tenancy agreement may not be amended to add, remove, or change a term unless both the landlord and tenant agree to the amendment. I am satisfied based on the testimony of both parties that the tenant did not obtain the consent of the landlord to amend the tenancy agreement to allow a pet. I find the tenant has breached the Act and the tenancy agreement.

Residential Tenancy Policy Guideline # 8 explains that, to end a tenancy for breach of a material term, the party alleging a breach must inform the other party in writing.

In this case, the landlord gave the tenant written notice to remove the pet. While the timeframe for the removal may have been short notice, I am satisfied it was not unreasonable and in any event the tenant has not taken any reasonable steps to have the pet removed for my consideration.

Further, I find the tenant's actions were unreasonable and contrary to the Act, when they deny the landlord their lawful right to access to rental unit to inspect for the removal of the pet.

Based on the above, I find the Notice issued on April 8, 2017, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **May 31, 2017, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

The landlord at the hearing agreed that should the tenant have the cat removed by Friday, May 12, 2017 and to allow an inspection to occur on Saturday, May 13, 2017 at 12:00 noon to ensure compliance, the landlord has agreed to extend the effective vacancy date to June 30, 2017, to allow the tenant more time to find alternate accommodations.

Therefore, I find it appropriate to grant the landlord a second order of possession effective **June 30, 2017, at 1:00PM.** This order must be served on the tenant and may be filed in the Supreme Court.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the Notice, issued on April 8, 2017, is dismissed.

The landlord is granted two orders of possession, as the later effective vacancy date is subject to the landlord being satisfied the pet has been removed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 12, 2017

Residential Tenancy Branch